



The Administrative Process for NPDES Permits

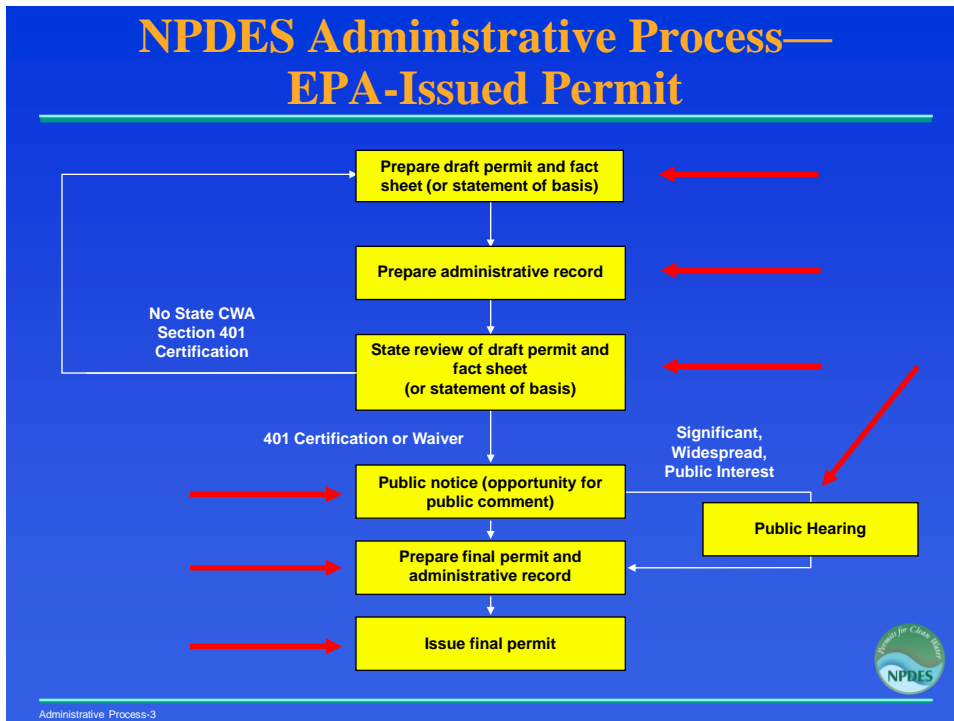
Today's Speakers

- **David Hair**
Environmental Engineer
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- **Greg Currey**
Environmental Engineer
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Fairfax, Virginia

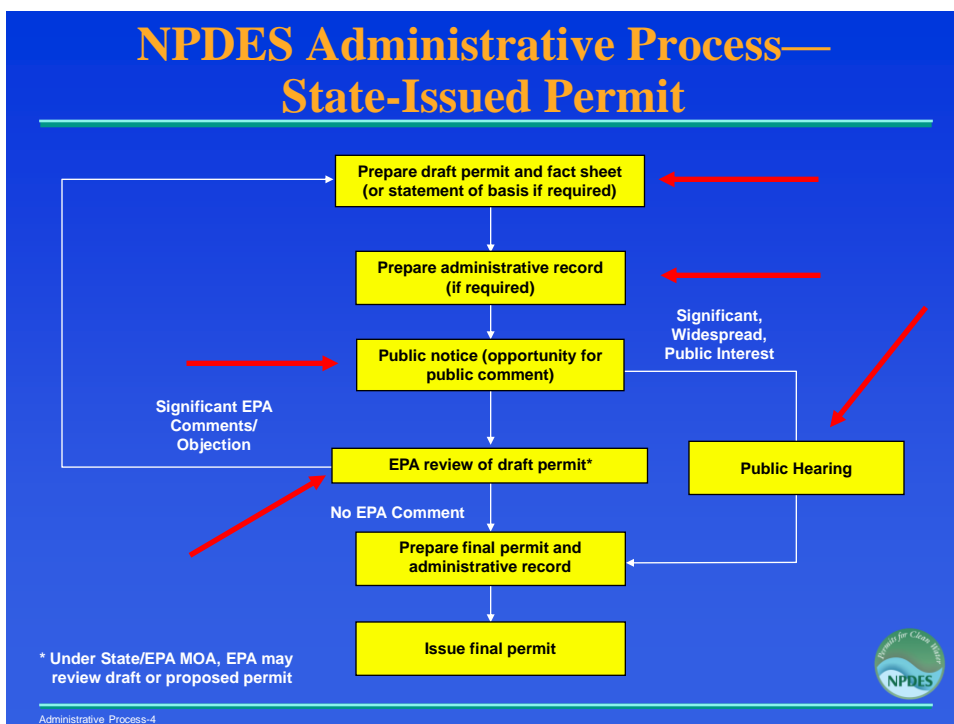


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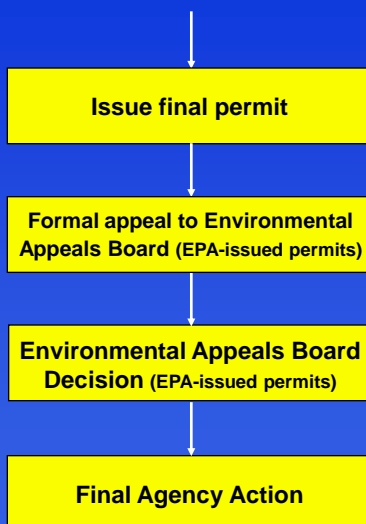
NPDES Administrative Process— EPA-Issued Permit



NPDES Administrative Process— State-Issued Permit



NPDES Administrative Process— After Final Permit Issuance



Administrative Process-5



NPDES Administrative Process

- **The administrative process of developing and issuing a permit involves:**
 - documenting all permit decisions
 - coordinating EPA and state, territorial, or tribal review of the draft permit
 - providing public notice, conducting hearings (if appropriate), and responding to comments
 - defending the permit and modifying after issuance (if required)

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Reasons for Good Documentation

- Establishes permanent record of the basis for the permit
- Explains legal basis of permit
- Provides sound basis for future modifications and permits
- Requires permit writer to be organized and logical throughout permit development process



Administrative Process-7

Contents of Administrative Record - Draft Permit

- **What is it?**
- **What is in it?**
 - application and supporting data
 - draft permit
 - statement of basis or fact sheet
 - documents or other items cited in statement of basis or fact sheet
 - other items supporting permit development
 - Environmental Impact Statement (EIS) for new source draft permits



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Fact Sheet vs. Statement of Basis

Fact Sheet (§§124.8, 124.56)

- Required for draft permits:
 - for major facilities
 - for Class I sludge management facilities
 - that incorporate a variance
 - that are NPDES general permits
 - that include a sewage sludge land application plan
 - that are subject to widespread public interest
- Minimum elements of a fact sheet specified in regulations

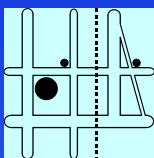
Statement of Basis (§124.7)

- Used when fact sheet not required
- Regulations require that a statement of basis include:
 - description of the conditions of the draft permit
 - reasons for the conditions



Administrative Process-9

Minimum Elements of a Fact Sheet (40 CFR 124.8, 124.56)



- General facility information**
 - description of facility or activity
 - sketch or description of location
 - type and quantity of waste/pollutants discharged
- Summary rationale of permit conditions**
 - applicable statutory and regulatory citations
 - references to administrative record



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Minimum Elements of a Fact Sheet (continued)

- **Detailed rationale of permit conditions**
 - explanation and calculation of effluent limitations and conditions
 - specific explanation of:
 - toxic pollutant limits
 - limits on internal wastestreams
 - case-by-case requirements
 - limits on indicator pollutants
 - regulation of users (non-POTWs only)
 - explanation of how required sewage sludge land application plan elements are addressed
 - inappropriateness of requested variances



Administrative Process-11

Minimum Elements of a Fact Sheet (continued)

- **Administrative Requirements**
 - permit procedures
 - comment period begin and end dates
 - procedures for requesting a hearing
 - other procedures by which the public may participation in final decision
 - permitting authority contact name and telephone number



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EPA or State/Tribe/Territory Review

- **EPA issues the permit (§124.53)**
 - a state/tribe/territory section 401 certification required
 - certifies that permit will achieve water quality standards
- **A state/tribe/territory issues the permit (§123.44, 123.24)**
 - EPA can review the permit (proposed or draft) and comment, object, or make recommendations
 - The state/tribe/territory must respond to an EPA objection
 - EPA can waive the right to review certain classes or categories of permits
 - EPA must retain the right to review:
 - major municipal and industrial permits
 - general permits
 - others (see 40 CFR 123.24(d))



Administrative Process-13

Public Notice (40 CFR 124.10)

Types of actions requiring public notice

- Tentative denial of application (EPA-issued permits)
- Draft NPDES permit
- Public hearing scheduled
- Appeal granted (EPA-issued permits)
- New source determination made (EPA-issued permits)
- Major permit modifications (after issuance)



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Public Notice (Continued)

- **Methods for public notice (40 CFR 124.10(c))**
 - direct mailing
 - publication in newspaper
- **Contents of public notice (40 CFR 124.10(d))**
 - name and address of regulatory authority
 - name and address of permittee
 - brief description of facility
 - name, address, and telephone number of permitting authority contact
 - name and location of receiving water and sludge use or disposal practices and site
 - description of public participation procedures
 - for permits issued by EPA—information on administrative record and statement of whether an EIS was completed if a new source



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Public Notice (Continued)

- **Timing of public notice (40 CFR 124.10(b))**
 - must allow at least 30 days for public comments
- **Responding to comments (40 CFR 124.17)**
 - significant comments require a response in writing
 - explain changes from the draft permit
 - response to comments must be made available to public



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Public Hearings (40 CFR 124.11, 124.12)

- Public hearings may be requested by any party
- Hearings are discretionary
- Scheduling the hearing automatically extends the comment period until the close of the hearing [§124.12(c)]
- A recording or transcript of the hearing must be made available to the public



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Public Participation and Environmental Justice

- Environmental justice (EJ) ensures fair treatment with respect to implementation of environmental laws and policies regardless of race, color, national origin, income
- Public participation process provides opportunities to address EJ concerns
 - provide appropriate avenues for public participation
 - seek out and facilitate involvement of those potentially affected
 - include public notices in more than one language where appropriate



Administrative Process-18

Contents of Administrative Record - Final Permit (40 CFR 124.18)

- **Administrative record of draft permit**
- **All comments received**
- **Response to comments**
- **Public hearing recording or transcript**
- **Final EIS for new sources**
- **Final permit**



Administrative Process-19

After Final Permit Issuance

- **Permit appeals**
- **Minor and major permit modifications**
- **Permit termination**
- **Permit transfer**



Administrative Process-20

Permit Appeal (40 CFR 124.19)

- Used to contest final permit limits and conditions
- Must be requested within 30 days following final permit issuance
 - challenges limited to issues raised during public comment on draft permit (unless good cause is shown)
- EAB decides to grant/deny request for permits issued by EPA
- Public notice of appeal required
- Only contested permit conditions are stayed (for EPA permits)



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Permit Appeal (continued)

- Permit writers' role during appeal
 - source of technical knowledge for attorney



Administrative Process-22

Minor Modifications (40 CFR 122.63)

- Used to make corrections to permit conditions with consent of the permittee
- Exempt from administrative procedures (i.e., draft permit, public notice, etc.)
- Actions considered minor:
 1. correcting typographical errors
 2. requiring more frequent monitoring
 3. changing interim compliance date (<120 days)
 4. allowing for a change in ownership
 5. changing the construction schedule for new source
 6. deleting a point source outfall
 7. incorporating an approved local pretreatment program



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Major Modifications (40 CFR 122.62)

- Used to address changes or information that might impact permit conditions
- Administrative procedures must be followed (i.e., draft permit, public notice, etc.)
- Causes for modification:
 1. alterations justifying new or different conditions
 2. new information
 3. new regulations (*with consent of the permittee*)
 4. modifying a compliance schedule for good cause
 5. addressing a variance request
 6. inserting a 307(a) toxic effluent standard
 7. requirements of a reopener condition
 8. incorporating or removing net limits



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Major Modifications (continued)

- **Causes for modification (continued):**
 - 9. requiring a POTW to develop a pretreatment program
 - 10. failure to notify a state whose waters might be affected by the discharge
 - 11. addressing discharges of non-limited pollutants
 - 12. establishing a notification level
 - 13. requiring implementation of minimum control measure(s) for a small MS4
 - 14. correcting technical mistakes or mistaken interpretations of law
 - 15. modifying effluent limits when unsuccessful BPJ treatment was installed
 - 16. incorporating, revising, or adding a sewage sludge land application plan



Administrative Process-25

Permit Terminations



- **Used to retract privilege to discharge during permit term**
- **Causes for termination:**
 - suspend effectiveness in emergency
 - terminate for falsifications, recalcitrance, or changed conditions (e.g., plant closure)
- **Administrative procedures must be followed (i.e., public notice)**
 - no public notice is required for termination because of outfall deletion or plant closure



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Permit Transfer

- **Necessary to address change in owner or operator**
- **Transfer Options**
 - transfer by modification or by revocation and reissuance
 - automatic transfer
 - prior 30-day notice
 - written agreement between new and old owners
 - permit will not be modified or revoked



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Feedback and Other Presentations

Questions or comments?

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